

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000306-001 DT

12/18/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

ANDREW M DAVIDSON

v.

TIMOTHY JONATHAN CULLIGAN (001)

TIMOTHY JONATHAN CULLIGAN
2907 N DAKOTA ST
CHANDLER AZ 85225

REMAND DESK-LCA-CCC
TEMPE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number 11-056654-1.

Defendant-Appellant Timothy Jonathan Culligan (Defendant) was convicted in Tempe Municipal Court of failing to notify the police department prior to towing a vehicle, and failing to tow a vehicle to Defendant's designated lot. Defendant contends the trial court erred in denying his Motion To Dismiss, which alleged the City of Tempe did not have jurisdiction. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On September 18, 2011, Tempe Police Officers investigated a report of suspicious vehicles parked in the parking lot of a vacant building at 1717 South Rural Road, which was a restaurant formerly known as Tres Margaritas. When they arrived, they found a tan Chevrolet Malibu and a maroon Toyota Avalon. While there, Officer Ramos observed a Dodge 4500 tow truck enter the parking lot while towing a black Honda Civic. Officer Ramos contacted the driver of the Dodge, who was Defendant, and Defendant told him he had towed the Chevrolet and the Toyota from 721 East Apache to the location at 1717 South Rural Road, and that he was going to tow all three vehicles to his business location at 310 South Alma School Road in Mesa. Defendant said he had telephoned the Tempe Police Department and advised them he was towing the Chevrolet and the Toyota, but he had not reported towing the Honda. Officer Ramos then cited Defendant for violating Tempe City Code (T.C.C.) § 32-4, which requires a private tow carrier to notify the Tempe City Police prior to towing any vehicle, and T.C.C. § 32-5(b), which requires a private tow carrier to tow the vehicle to the tow carrier's designated lot.

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Prior to trial, Defendant filed a Motion To Dismiss alleging the City of Tempe did not have jurisdiction because the location from which the vehicles were towed (721 East Apache) was part of the Arizona State University campus. After hearing arguments from both sides, the trial court denied Defendant's Motion To Dismiss. The matter then proceeded to trial, and the trial court found Defendant guilty of both offenses. The trial court then imposed sentence. On February 21, 2012, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID THE TEMPE MUNICIPAL COURT HAVE JURISDICTION IN THIS MATTER.

Defendant contends that, because the location from which the vehicles were towed (721 E. Apache) was part of the Arizona State University campus, the City of Tempe and the Tempe Municipal Court did not have jurisdiction in this matter. The applicable statute provides as follows:

A. In each city or town incorporated under the general laws of this state, there shall be a municipal court.

B. Every court established pursuant to subsection A . . . has jurisdiction of all cases arising under the ordinances of the city or town, and has jurisdiction concurrently with justices of the peace of precincts in which the city or town is located, of violations of laws of the state committed within the limits of the city or town.

A.R.S. § 22-402. Because Defendant committed the offenses within the Tempe City limits, the Tempe Municipal Court had jurisdiction over these offenses.

For authority, Defendant cites *Board of Regents v. City of Tempe*, 88 Ariz. 299, 356 P.2d 399 (1960) (*Tempe I*), and *City of Tempe v. Arizona Bd. of Regents*, 11 Ariz. App. 24, 461 P.2d 503 (1969) (*Tempe II*). In *Tempe I*, the court held a political subdivision of the State of Arizona (the City of Tempe) could not apply its building codes to the State of Arizona through its entity, the Arizona Board of Regents. 88 Ariz. at 312, 356 P.2d at 407. Similarly, in *Tempe II*, the court held a political subdivision of the State of Arizona (the City of Tempe) could not apply its transaction privilege tax to the State of Arizona through its entity, the Arizona Board of Regents (the Board), for activities the Board conducted on the Arizona State University campus, such as providing residential housing and meals, selling books and audio and video material, and allowing organizations to use campus facilities for concerts. The court held the Board was an agency of the State of Arizona, and the City of Tempe was a political subdivision of the State of Arizona, and thus a "political subdivision may not tax its sovereign without the consent of the sovereign." 11 Ariz. App. at 25, 461 P.2d at 504. It further stated:

We therefore hold that the City of Tempe may not tax the Arizona Board of Regents. *We do not express an opinion whether the City of Tempe may impose a transaction privilege tax on those businesses located upon the campus of Arizona State University which are not conducted by the Arizona Board of Regents.* We are concerned only with whether the City of Tempe may tax the Arizona Board of Regents without specific constitutional and legislative power to do so. We hold that they may not.

11 Ariz. App. at 25-26, 461 P.2d at 504-05 (emphasis added).

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Arizona courts have since addressed the issue reserved in *Tempe II* and held a city may impose a transaction privilege tax for activities conducted by a private organization rather than the Arizona Board of Regents. In *City of Tempe v. Del E. Webb Corp.*, 13 Ariz. App. 597, 480 P.2d 18 (1969) (*Tempe III*), the Arizona Court of Appeals held the City of Tempe could impose its transaction privilege tax on the Del E. Webb Corporation for its activities in constructing buildings on the Arizona State University campus. 13 Ariz. App. at 599, 480 P.2d at 20. And in *Flagstaff Vending Co. v. City of Flagstaff*, 118 Ariz. 556, 578 P.2d 985 (1978), the Arizona Supreme Court held the City of Flagstaff could impose its transaction privilege tax on a private corporation for its sales from its vending machines located on the Northern Arizona University campus. 118 Ariz. at 559, 578 P.2d at 988. It is thus clear from *Tempe I*, *Tempe II*, *Tempe III*, and *Flagstaff Vending* that a city may not impose its regulations on the State of Arizona acting through the Arizona Board of Regents, but a city may impose its regulations on a private entity, even when that private entity is acting on a university campus controlled by the Arizona Board of Regents. Thus, the City of Tempe is not precluded from enforcing its City Code provisions on a private entity, such as Defendant, even when that private entity is acting on a university campus controlled by the Arizona Board of Regents, such as the Arizona State University campus.

Moreover, there is another reason why City of Tempe may enforce its City Code provisions on Defendant. Defendant was towing the black Honda Civic onto the property at 1717 South Rural Road, which all parties agree is not part of the Arizona State University campus. Defendant thus violated the Tempe City Code provisions while he was on property within the city limits of Tempe that was not part of the Arizona State University campus.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court correctly found it had jurisdiction over Defendant for his actions in towing and parking the vehicles.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Tempe Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Tempe Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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